



Comptroller General
of the United States

Washington, D.C. 20548

143670

Decision

Matter of: Associates Relocation Management Company, Inc.

File: B-242437

Date: April 19, 1991

L. Clyde Groover, Jr., for the protester,
W. L. Caviness, Jordan Strauss, and Anthony G. Beyer, Esq.,
the Environmental Protection Agency, for the agency,
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO, par-
ticipated in the preparation of the decision.

DIGEST

Award of contract on the basis of initial proposals is proper where the solicitation advised offerors of the possibility and existence of adequate competition demonstrated that acceptance of the low-priced initial proposal will result in the lowest overall cost to the government.

DECISION

Associates Relocation Management Company, Inc. (ARMC) protests the award of a contract to PHH Homequity under request for proposals (RFP) No. D000520N1, issued by the Environmental Protection Agency (EPA) for relocation services for transferring EPA employees. ARMC alleges that the EPA improperly eliminated its proposal from the competitive range.

We deny the protest in part and dismiss it in part.

The solicitation sought proposals for a relocation services contract including home sales and home finding assistance for EPA employees. The RFP notified offerors that the award could be made on the basis of initial offers, without discussion, and cautioned offerors that each initial proposal should contain the offeror's most favorable terms. The solicitation provided that award would be made to the low-priced, technically acceptable offeror.

The EPA received three proposals in response to the RFP, two of which were determined to be technically acceptable. The contracting officer decided to award the contract on the basis of initial proposals to PHH Homequity as the technically acceptable, low-priced offeror, with a total aggregate price,

including option periods, of \$5,207,832.73,^{1/} ARMC's total aggregate price was \$5,890,307.05. The agency notified the unsuccessful offerors by letter that their proposals were "determined not to be within the competitive range" and would not be further considered.

ARMC protests that EPA improperly eliminated its proposal from the competitive range on the basis of price, and asserts that the EPA acted unfairly and in bad faith by not holding discussions with ARMC and permitting it to modify its proposal and submit a best and final offer. The protester also argues that the agency's cost evaluation is flawed because ARMC would have offered a lower price had it been given the opportunity to review the agency appraisals of homes to be marketed, for accuracy and consistency.^{2/}

We dismiss ARMC's challenge to the cost evaluation as untimely. ARMC contended to the agency that contractors should be permitted to review the appraisals; this request was specifically denied in an amendment to the RFP which was issued on June 12, 1990. ARMC's protest in this respect is untimely because it was not filed until after award; under our regulations, since the issue concerns an alleged impropriety apparent on the face of the solicitation, the protest should have been filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991).

The primary dispute in this protest arises from the EPA's use of the phrase "competitive range" in EPA's notice to ARMC that it had not been selected for award. The agency's letter to both unsuccessful offerors stated that they were no longer within the "competitive range," which led ARMC to believe that its offer had been rejected and that discussions and revised proposals were being pursued with other offerors. However, in actuality, after evaluating the initial proposals, and finding ARMC's proposal technically acceptable, EPA made an award determination based on price, and merely intended to notify ARMC of the outcome of the competition.

^{1/} Cost proposals were evaluated, as provided in the RFP, by applying the offeror's proposed percentages and prices against an average estimated appraisal value of \$113,425.

^{2/} Although the protester did not amplify this argument, it appears that ARMC believes that it could lower its price if it could take steps to assure that the indicated appraised values of the houses were correct, which would enable ARMC to more effectively market the properties.

Under the law applicable here, a contracting agency may make an award on the basis of initial proposals, and not conduct discussions or allow offerors to revise their proposals, where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government. Federal Acquisition Regulation (FAR) § 15.610; Maico Hearing Instruments, Inc., B-229925, Jan. 15, 1988, 88-1 CPD ¶ 42.

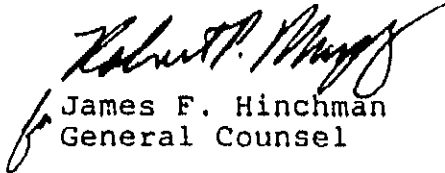
EPA included the appropriate clauses in the RFP advising offerors to submit their best proposals since award might be made on the basis of initial proposals, and ARMC has not demonstrated that EPA's selection of PHH Homequity did not result in the lowest overall cost to the government. Although the protester argues that the agency did not have sufficient competition on which to base its price reasonableness determination, the FAR provides that adequate price competition exists where offers are solicited and received from two or more responsible offerors that satisfy the government's needs. FAR § 15.804-3(b)(1). Here, proposals were received from two responsible offerors and the contracting officer determined that based on the government estimate and a comparison of the two prices, PHH Homequity's price was fair and reasonable, a determination not contradicted by any evidence in the record. See Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 CPD ¶ 269.

ARMC also alleges that the EPA acted in bad faith by awarding the contract to PHH Homequity and not considering the protester's proposal. Where a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit very strong evidence that the contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith. Cajar Defense Support Co.--Recon., B-240477.2, Sept. 14, 1990, 90-2 CPD ¶ 215. There is no evidence in the record which suggests bad faith on the part of the contracting officials; rather, the record clearly demonstrates that ARMC's proposal was considered and evaluated in accordance with the stated evaluation criteria; ARMC did not receive the award because it was not the low offeror.

Finally, the protester questions the awardee's ability to perform the contract at a price lower than ARMC's, since ARMC's price was based on its recent experience with other government contracts. We dismiss this allegation as it

constitutes a challenge to the contracting officer's affirmative determination of responsibility, and as such is not for review by our Office, except under limited circumstances not present here. 4 C.F.R. § 21.3(m)(5).

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel